

1 MS. WEST: Dr. Joseph Adams?

2 DR. ADAMS: I'm Dr. Joseph Adams, and I'm
3 representing the State Medical Society and the
4 Coalition for a Smoke Free Maryland, which is a
5 Coalition comprised of the Medical Society, the Heart,
6 Lung and Cancer Society in Maryland, the Medical
7 Society Auxiliary, the Congress of PTAs in Maryland,
8 the Maryland Chapter of the American Academy of
9 Pediatrics, the Maryland State School Health Counsel,
10 Maryland Association of County Health Officers, and
11 some other groups as well.

12 I'd like to preface my remarks by just saying a
13 word about how we get reliable information.

14 Basically, we have to consider the source. This
15 is particularly relevant to these hearings in which we
16 are hearing testimony from the tobacco industry
17 representatives. In a few weeks from now will be the
18 30th anniversary of the Surgeon General's first report
19 on smoking. In spite of the intervening 30 years and
20 more and thousands of articles, the tobacco industry
21 does not even concede that smoking itself represents

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1 harm to health in any way, and as a source of reliable
2 information representatives of the tobacco industry
3 have become a laughing stock with no credibility left
4 intact.

5 According to the former Surgeon General, C.
6 Everett Koop, "The tobacco industry has discredited
7 itself for so many years with outlandish arguments that
8 reasonable discussion with its representatives is no
9 longer possible."

10 You heard testimony from tobacco industry
11 representatives today which it make it appear as though
12 the representatives are very concerned about the
13 welfare of small business persons and very concerned
14 somehow with some issue that they've raised about
15 possible workplace productivity.

16 Clearly, I think we all know that the reason they
17 are very concerned about these regulations is because
18 they feel that the regulations will ultimately lead to
19 a decline in sales because of the ultimate decrease in
20 the number of Marylanders who are addicted to tobacco.

21 Now, talking about involuntary smoking, you've

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1 heard from -- I won't repeat it -- from Jim Repace
2 about the large number of scientific, objective,
3 governmental and medical organizations which have found
4 that environmental tobacco smoke causes lung cancer and
5 lung cancer deaths among nonsmokers.

6 In fact, only the tobacco industry and the people
7 with financial ties to the industry have ever publicly
8 questioned this finding. No independent body has ever
9 reached the opposite conclusion and, although the
10 tobacco industry has accused the EPA of bias, it is far
11 more likely that it is the tobacco industry's position
12 that is motivated by bias and self-interest.

13 Involuntary smoking is the third major cause of
14 preventable death after, number one, active smoking by
15 smokers, and number two, alcohol. Cancer mortality
16 from involuntary smoking among nonsmokers alone exceeds
17 the combined mortality of all regulated environmental
18 carcinogens. It is the number one cause of
19 environmental cancer, killing more Americans than all
20 forms of air pollution, water pollution, food additives
21 and radiation combined.

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1 The health risks in involuntary smoking have
2 become common knowledge. In 1986, 81 percent of adults
3 thought that tobacco smoke is harmful for nonsmokers
4 who live or work with smokers. In 1987 and in a
5 separate study, '81 percent thought that people's smoke
6 is harmful to others nearby.

7 Adoption of 100 percent smoke-free policies to
8 protect workers is a phenomenon completely of the 1980s
9 and 1990s. Aspen, Colorado, passed the first 100
10 percent smoke-free restaurant ordinance in 1986. Now,
11 local 100 percent smoke-free ordinances are increasing
12 at an exponential rate. Even cities in tobacco
13 producing states such as Greensboro, North Carolina,
14 has passed them.

15 More offices are protecting their workers from
16 second-hand smoke than ever before. In a 1992 survey,
17 56 percent of offices were completely smoke-free,
18 compared to 34 percent in 1991 by a separate survey and
19 compared to 7 percent in 1987, compared to 2 percent in
20 1986.

21 Why is it that we have seen this dramatic change

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1 across the country promulgated by offices and
2 businesses themselves? It obviously is because of our
3 growing awareness of the health hazards of
4 environmental smoking. The other reason is because of
5 the expense to employers of workplace smoking.

6 Conservative estimates of the excess annual costs
7 of an employee's smoking habit are \$300 to \$800 a year.
8 In 1985, Office of Technology Assessment study, it was
9 estimated that \$11 billion to \$35 billion of the annual
10 health care costs are smoking related or 3 to 9 percent
11 of total health care costs.

12 The same study estimated that smoking related lost
13 productivity costs between \$26 billion and \$60 billion
14 a year of which about 90 percent was for people under
15 the age of 65. A significant proportion of those costs
16 are borne by employers.

17 The total cost of smoking in Maryland is over \$1.5
18 billion and the direct health care cost in Maryland
19 alone in one year is \$374 million.

20 What are the experience of other localities which
21 have limited workplace smoking? In the 1980s, San

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1 Francisco prohibited smoking in the workplace if an
2 acceptable compromise between smokers and nonsmokers
3 could not be reached. To attempt to prevent the
4 legislation, there was a front group called San
5 Franciscans Against Government Intrusion funded almost
6 completely by the tobacco industry which unsuccessfully
7 spent over \$1 million trying to defeat it.

8 After the regulations went into effect, or during
9 the debate, the industry claimed that the law would be
10 expensive to administer, would cause workplace
11 antagonism and would incite litigation.

12 A published report evaluating the first 12 months
13 experience with this regulation showed that none of the
14 predictions occurred. There were no lethal actions,
15 and the ease with which the ordinance was implemented
16 and maintained was noteworthy.

17 To wind up, I'm a small business owner and I have
18 smoking employees in my own business and my practice is
19 internal medicine, and our nonsmoking policy of our
20 building is extremely easy to administer. As a matter
21 of fact, it's my understanding that the law in Maryland

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1 says that employees have the right to a 15-minute break
2 for every three hours of work that they do. It's
3 perfectly easy for people to do their smoking, if they
4 wish, during the 15-minute break.

5 If MOSH passes this regulation, it will be a boon
6 for smokers. The great majority of smokers would
7 welcome it. Four out of five adult smokers want to
8 quit. Most have made at least a serious attempt to
9 quit, and as you've heard from Dr. Stillman, smoke-free
10 ordinances allow as much as 25 percent or more to
11 finally be able to quit.

12 And among my patients, it's very rare for one of
13 my smoking patients not to want to quit. When one of
14 them tells me that his workplace is going smoke-free,
15 it's usually with some amount of optimism that it will
16 help him in his continuing effort to quit smoking.

17 That's all I have to say, thank you.

18 CHAIRMAN MARSHALL: Any questions?

19 I may have to repeat several times and please
20 believe me that I do not do it to hurry anyone through
21 their presentation, but we do have a lot of people

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1 waiting and I will allow one minute after your five
2 minutes have elapsed, but after that minute I will have
3 to interrupt.

4 MS. MARKS: Good afternoon. My name is Marsha
5 Marks, and I'm with the Maryland Coalition to Stop the
6 Illegal Sale of Tobacco to Minors -- to Children.

7 And I will be very brief, because I think
8 everything has been covered very well. I want to say
9 that I have been an activist in Montgomery County for
10 about the past 15 years, and I wanted to bring to you
11 the experience in Montgomery County because at that
12 time we had a coalition in which we were able to pass
13 legislation to ban smoking in the workplace, and this
14 has been very effective.

15 All except for small businesses were controlled by
16 the law. There is even no smoking in automobiles if
17 the nonsmoker feels that is important.

18 The problem is, it has not covered the small mom
19 and pop restaurants, workplaces. The business
20 community themselves strongly opposed this law, just as
21 they opposed much regulation by government, but they

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1 have been very grateful once this legislation was
2 passed.

3 As a matter of fact, as a prior speaker said,
4 banning smoking in the workplace is good for businesses
5 and a healthy work force is a productive work force.

6 The maintenance costs have been greatly reduced.
7 If you need more studies on that, I think that there
8 are quite a few available on the reduction in cost.

9 What I have handed out to you, and if you'll
10 excuse me, I'm not a paid employee. I've been fighting
11 this industry for a lot of years out of my own pocket.
12 This is my spellchecker obviously didn't work today, as
13 you'll see the many mistakes, but I have here on the
14 last pages some information from Michigan in which they
15 were able to ban smoking in the schools, not only as we
16 did in Maryland during the school day, but also after
17 school, because there are a lot of studies showing, as
18 Dr. Repace has shown, that the tobacco remains in the
19 building long after the smoker has departed.

20 And this is going to be important. Hopefully, you
21 will pass a workplace law which will include schools,

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1 and therefore visitors to schools will also not be able
2 to smoke in the building, and young children coming in
3 the next day will not have their asthma attacks because
4 the smoke is still in the building.

5 I wanted to go back to one point too. The
6 employers were very pleased when we passed the
7 workplace smoking bill in Montgomery County because
8 they didn't have to be the bad guys and tell their
9 employees they couldn't smoke. They could just quote
10 the law.

11 In fact, we found some small businesses were even
12 quoting the law even though they may not have been
13 covered. It really is helpful to businesses, and they
14 will fight you all the way, no government intrusion,
15 but in reality they're the ones that are being helped
16 the most.

17 Finally, I just want to say as a social worker
18 that young children are very sensitive to pick up the
19 hypocrisy of adults and we know that tobacco smoke is a
20 Class A carcinogen, and it's time for the government to
21 say we don't want anyone exposed to Class A

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1 carcinogen.

2 We have a lot of young people that go to work at
3 age 15 and it's becoming more and more common, as many
4 of you know, children and young people have much
5 smaller lungs, faster respiratory systems. The toxins
6 are much more dangerous to young people.

7 I think it's time for you to protect the children
8 of this country, the work force, and everybody else.
9 And thank you.

10 Some other members of our Coalition are going to
11 be testifying next week in Frederick, and if you are at
12 all interested in hearing from some of the people in
13 Montgomery County as to how our workplace laws are
14 working, I'd be glad to get you some more people to
15 talk to.

16 CHAIRMAN MARSHALL: Thank you.

17 Any questions?

18 MS. MARKS: Thank you.

19 CHAIRMAN MARSHALL: Thank you very much.

20 MS. MARKS: Oh, I just wanted to say I also
21 included another study that I don't think was included

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1 by some of the scientists before. This was a New
2 England Journal of Medicine rather well-documented
3 study on the cotinine level in urine. And that is
4 also included in my packet there.

5 MS. WEST: I'm not sure if the next two speakers
6 are actually here -- Delegate George Owens or Jean
7 Brown?

8 Then I'll call on Arnold Amass, please.

9 MR. AMASS: Mr. Chairman, ladies and gentlemen of
10 the Committee, my name is Arnold Amass. I'm the
11 smoking compliance officer at the NSA, which is the
12 National Security Agency, located at Ft. Mead,
13 Maryland.

14 I have given out a copy of my testimony on our
15 experiences with banning smoking in the workplace, and
16 in compliance with the Chairman's wishes, I will not
17 rehash that testimony.

18 But I'm here to say that as a compliance officer
19 who deals with a very large work force, we are one of
20 the largest federal employers in the state of Maryland.

21 I have the nuts and bolts and day to day

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1 experience of administering a smoking policy in the
2 agency. In 1989, we went from an agency where there
3 was smoking at will, to banning smoking by vote in
4 various offices and parts of cafeterias and so forth to
5 then progressing to banning smoking within the facility
6 to, this past July, where we not only banned smoking in
7 all facilities and buildings and vehicles of the
8 agency, but also moved our smokers away from the
9 entrances to provide for a smoke-free corridor.

10 I have to tell you that that has gone very well.
11 Contrary to what you may believe, the smokers comply
12 very, very well. We have very little problems with
13 calls. Usually what happens when we have expanded the
14 policy another step, so to speak, we get a lot of calls
15 for the first two weeks prior to the date of the ban
16 going into place. We get a number of calls in the week
17 after, and simply the calls are: what are the limits,
18 where do I go, and how far do I have to stand away, and
19 so forth?

20 And once the ban is in place for a couple weeks,
21 the calls virtually disappear.

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1 So I have a good distinction job of not having the
2 problems on a day-to-day basis that have been alluded
3 to as the headaches of an employer and so forth. I
4 think that this can be implemented. I commend the
5 Secretary and I say to you as a health care
6 professional that I think this is a good move for the
7 state of Maryland. It has worked in our agency. Our
8 policy has been copied by the CIA, the DIA, the State
9 Department almost verbatim. And they are experiencing
10 and talking to my counterparts with those agencies the
11 same type of situations that I have.

12 Once the policy is in place and once everybody
13 stands the limits of the policy, there are very little
14 problems in administering it. And I await your
15 questions.

16 CHAIRMAN MARSHALL: Any questions?

17 MR. LAWSON: Just one quick question. I noted you
18 could use the nicotine patch reference.

19 MR. AMASS: Yes.

20 MR. LAWSON: Did you underwrite the cost of that?

21 MR. AMASS: I would have thought you were going to

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1 ask that and I was, in fact, going to allude to it
2 because I heard your question earlier.

3 The Department of Defense, which we are an agency
4 of, has mandated that we conduct smoking cessation
5 programs. We have conducted smoking cessation programs
6 since 1988, with the advent of the nicotine patch, we
7 investigated the possibilities of using it and decided
8 to go ahead and use it in conjunction with our smoking
9 cessation program, which is run by a three-person team.
10 It has a psychologist, a medical doctor and a
11 pharmacist on it. They run an eight-week program, and
12 we were going to use the nicotine patch.

13 All of a sudden, we had budget restraints as the
14 federal government did and has had. And I wrote to one
15 of the companies that produce nicotine patches, to the
16 president of the company, and they were so impressed by
17 the program that we put together that they donated the
18 patches to us.

19 So we have been using them for nearly a year now,
20 but at no cost to the federal government because they
21 were donated to us.

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1 MR. LAWSON: At no cost to the employee.

2 MR. AMASS: At no cost to the employee. They were
3 getting them free, yes. They get the smoking cessation
4 program free too.

5 MR. NOBILE: When you put the ban in place, I take
6 it that that was submitted in writing?

7 MR. AMASS: Yes.

8 MR. NOBILE: Everybody was made aware of it?

9 MR. AMASS: Yes.

10 MR. NOBILE: In the ban itself, was there a
11 segment -- and I take it that there must have been some
12 course of action on the part of the employer if people
13 didn't comply?

14 MR. AMASS: Right.

15 MR. NOBILE: I'd like to know what was in there?

16 MR. AMASS: Okay. The smoking regulation has a
17 clause in it that because it is a regulation issued by
18 the Director of the agency, that makes it no different
19 than any other policy or regulation that you would have
20 in the agency that you would violate. For example, if
21 you were to violate our security regulations or carry a

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1 firearm or anything of that sort, you would be in
2 violation of a governmental regulation and you would be
3 subject to the penalties for doing so.

4 Usually, it has a five-step process. The first
5 step is an informational process where your supervisor
6 says to you, do you know that you're in violation of
7 this ban, the regulation of the agency you're not
8 supposed to smoke here or there? And that has no
9 administrative weight whatsoever. It doesn't go in the
10 employee's record. It doesn't go on their file or
11 anything. There's no written notation made of it.

12 The second step is a written warning with
13 counseling plus a written warning which would go in the
14 employee's file. And then it moves up to there through
15 hearings and so forth to possible dismissal.

16 We have never, never gone past the first step. We
17 have never gone past the step of simply telling an
18 employee, are you aware of the fact that you're smoking
19 in a place that's restricted.

20 MR. NOBILE: When you were preparing the ban
21 itself before the language was put on paper and put

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1 together, how much input did you have between you as,
2 say, an administrator and the employees affected by it?

3 MR. AMASS: Hours and hours of meetings with
4 department heads, interdepartmental sessions, peer
5 review by medical authorities, a great deal of input.
6 We've had meetings with ship workers, employees at all
7 levels, so there was a great deal of input from
8 employees.

9 CHAIRMAN MARSHALL: Any other questions?
10 Thank you very much.

11 MS. WEST: Stewart Rhodes, please.

12 MR. RHODES: Hi. Thanks for the chance to speak.
13 My name is Stewart Rhodes. I have no official
14 affiliation. I live in Ellicott City, Maryland. Do
15 you want my actual address?

16 I work as a machinist and screen printer for the
17 last 30 years, and come to you with the conclusion that
18 smoking is dangerous, and I assume that that's common
19 knowledge for you as it is for most of the rest of us.
20 And the thing around smoking is dangerous for me, so I
21 come with that predisposition.

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1 I don't have anything else to add to the
2 scientific debate of that issue except to say that I
3 would hope that it's time and you can now move past
4 trying to answer the question, is secondary smoke
5 dangerous for us, and get on to what to do about it.

6 Let's see. What else do I need to say to you? As
7 a screen printer and a machinist I've worked in shops
8 all my life where I've needed to deal with, you know, a
9 lot of different ways various occupational hazards and
10 consider myself, along with a lot of my coworkers,
11 fairly expert at a lot of different ways of addressing
12 dangers to us in the workplace, anywhere from getting
13 help from MOSH, which we do sometimes, to just
14 developing allies to try to get something changed in
15 the workplace, to making deals with people who are
16 presenting a danger to us and trying to get something
17 to happen that way.

18 We could use help around smoking the same way that
19 we could use it, have used it in other ways. What I
20 mean is to have a regulation to back up, you know, the
21 fact that it is dangerous and we need to do something

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1 about it.

2 Right now I work in a shop that has 40 employees,
3 and there's only two of us that don't smoke, so it's a
4 little different from other places where I've worked
5 where the balance has been different and I guess just
6 some anecdotal stuff about how difficult it is to
7 approach, trying not to be exposed to smoke while I'm
8 working in that kind of a place.

9 You can imagine, especially since the four
10 partners that own the business all smoke too, and at
11 any given time many of the people I work with can be
12 approached by several people who are smoking in very
13 close quarters and often people of a higher rank than
14 us where we don't have a lot to say about what they're
15 doing. Or, if we do say something about what they're
16 doing, we risk potentially our job, but other kinds of
17 difficulties at work.

18 And that's what I mean by we could use some help
19 outside of kind of the social ways that you might deal
20 with that kind of a danger if you're presented outside
21 of a workplace. Some of those ways don't work so well

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1 in the workplace.

2 Another thing is smoking is kind of, in a broader
3 way, a socially accepted thing to do as opposed to some
4 of the other dangers that I might have had to deal with
5 in the workplace. I don't have to argue too long with
6 someone to get them to stop working with open, you
7 know, basins of trichlorethylene around me, but it's
8 very different if I try to get them to stop smoking
9 around me.

10 Smoking is also done by people -- it's kind of
11 stress-related, and so agreements I might make such as
12 I did when I took this job where I knew I'd be around a
13 lot of smokers, I made agreements conditional on my
14 taking the job that they wouldn't smoke in the room
15 where I worked when they're working next to me.

16 And that was great, and they were very nice about
17 it and very agreeable, but as soon as the stress level
18 reaches a certain level, as soon as they're irritated
19 with me, as soon as any number of factors happens,
20 those agreements are out the window and I'm exposed.

21 So basically for me when in the workplace, and

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1 particularly since I work in closed shops in small
2 rooms, when people around me are smoking I'm exposed
3 without any choice and feel that it's almost as if I
4 were smoking.

5 So I could use your help. I could use some
6 regulations to fall back on and --

7 Yes?

8 CHAIRMAN MARSHALL: We're studying the problem and
9 getting the facts. We're interested in hearing what
10 both have to say.

11 MR. RHODES: I was surprised. I haven't been in
12 this setting before and I was surprised to hear that --
13 it seems like some of the debate is still about whether
14 it is dangerous or not to be around smoking, and just
15 speaking for me and the one other non-smoker where I
16 work, let's get past that.

17 CHAIRMAN MARSHALL: Any questions?

18 Thank you.

19 MR. RHODES: Thank you.

20 MS. WEST: Keith Burkhardt.

21 MR. BURKHARDT: Thank you very much for giving me

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1 the honor of speaking at this time.

2 If you will please refer to the submission I
3 handed in to everybody. It's my written statement and
4 also an article in the Washington Post, also a pamphlet
5 called "BREATH."

6 My name's Keith Burkhardt. I'm a resident of
7 Owings Mills, Maryland. I'm a former waiter, have
8 worked at several restaurants over a two-year span. I
9 am now well-informed on the issue of second-hand smoke
10 and it's dangers. I have decided never to work in a
11 restaurant again until it is smoke-free. In my past
12 experiences as a waiter, my throat got sore frequently
13 as I was exposed to second-hand smoke. I can't expose
14 myself to a cancerous substance in order to improve my
15 income.

16 I feel safer working in a smoke-free environment.
17 It is hazardous to work in a restaurant, even if
18 it has a nonsmoking section. A nonsmoking section and
19 a smoking section are separated by a partition,
20 imaginary line or by a table. There is no way to
21 protect customers and employees from second-hand smoke.

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1 Michael Siegel of the Centers for the Disease
2 Control and Prevention's Office on Smoking and Health
3 has done a research on second-hand smoke. He said that
4 nonsmoking section in restaurants are a failure because
5 of the law of physics. Second-hand smoke tends to
6 spread into all areas, so for the employee, he or she
7 will suffer.

8 Bar and restaurant workers breathe in three to
9 five times as much second-hand smoke as other workers.
10 It's like smoking one and a half to two packs a day.

11 It seems that restaurants and bars are trading off
12 the health of the worker and employee for supporting
13 the addiction of the smoker. Most restaurants and bars
14 care for making money, not creating a safe and healthy
15 environment for all people of all ages.

16 In the past, lawsuits have been brought up by
17 employees who were exposed to second-hand smoke. In
18 California, a waiter won an \$85,000 settlement after
19 suffering a heart attack caused by involuntary exposure
20 to tobacco smoke in a restaurant. If smoking is still
21 permitted in Maryland, lawsuits will make the news in

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1 the future.

2 I would like to read a partial listing of smoke-
3 free restaurants in Maryland: Jerry's Subs and Pizza,
4 Ellicott City; Boston Chicken, Ellicott City; Wendy's,
5 Columbia; Little Alexander's Pastaria and Bakery,
6 Ellicott City; Bullock's Airport Inn, Westminster;
7 Puffins, Pikesville; Wendy's, Owings Mills; Burger
8 King, Reistertown; McDonald's in Timonium, Towson, Hunt
9 Valley and Fullerton; Borders Espresso Bar, Towson;
10 Chuck E Cheese Pizza Time Theatre, Glen Burnie;
11 Mealey's Inn, New Market; Wendy's in Laurel and Lanham;
12 California Pizza Kitchen, Bethesda; Amalfi Ristorante
13 Italiano, Rockville; McDonald's, at least two of them
14 in Hagerstown; the Inn at Walnut Bottom, Cumberland;
15 McDonald's in LaVale and Cumberland; Penn Alps,
16 Grantsville; Deer Park Inn, near Oakland; and at least
17 one Fox's Pizza in Garrett County.

18 This list shows that these restaurants do care
19 about the health of customers and employees.

20 I'm going to talk about a restaurant that's smoke-
21 free and successful. The Carlyle Grand Cafe near

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1 Arlington, Virginia, is a prime example. It went
2 smoke-free in early 1993 and business is booming.
3 Sales are up 35 percent over last year as a result of
4 being smoke-free.

5 Tony Ford, general manager, made his restaurant
6 smoke-free because of the EPA report. He is genuinely
7 concerned about his employees and customers.

8 I personally visited Carlyle Grand Cafe back in
9 October and the restaurant was packed. I couldn't get
10 a seat at the bar. The wait for a table is 45 minutes.
11 I did dine there the next day and thoroughly enjoyed
12 the smoke-free environment.

13 This restaurant enjoys a competitive advantage
14 over ones in nearby Maryland and Washington, D.C. If
15 Maryland has smoke-free restaurants, then Maryland will
16 draw in customers from bordering states and Washington,
17 D.C.

18 Since EPA has classified second-hand smoke as a
19 Group A carcinogen, there is no safe level. This is
20 why wall smoking should be banned in all businesses,
21 especially restaurants and bars. Banning smoking by

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1 employees isn't going to protect anyone's health. The
2 ban must include everyone who walks in the door of
3 businesses in Maryland.

4 CHAIRMAN MARSHALL: Thank you.

5 Any questions?

6 Thank you, Mr. Burkhardt.

7 MS. WEST: Ira Fader.

8 MR. FADER: Mr. Chairman, ladies and gentleman, I
9 will speak on the other side at this point.

10 I run a very small business. We have
11 approximately 38 employees. We're not a GE. We're not
12 a NSA. We're not a Westinghouse.

13 Over 100 years ago my grandfather started Fader's
14 catering to the cigar smokers of Baltimore, corner of
15 Baltimore and Gilbert Avenue. That location and the
16 small cigar factory on Water Street were burned down in
17 the Baltimore fire of 1904. The store was reopened a
18 year later in 1905 at 210 East Baltimore Street, where
19 it remained until 1972, when I moved it to its present
20 location at 107 East Baltimore Street.

21 My father worked in the company until his death in

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1 1959 as did my mother, who entered the business out of
2 necessity during the depression. I have owned the
3 company since my father's death.

4 Presently, the company has six locations in and
5 around Baltimore, including one in Annapolis.

6 Fader's is a tobacconist. Simply stated, we sell
7 premium cigars, custom-blended pipe tobacco. Our
8 customers are smokers, and in order to effectively
9 cater to that individual, most of our sales personnel
10 also smoke. Although it's not a prerequisite of
11 employment that our salespersons smoke -- and we do
12 have employees who do not smoke -- the vast majority do
13 smoke.

14 They enjoy smoking, whether it be a pipe or a
15 cigar, and they use their expertise to help our
16 customers find just the right tobacco blend or a cigar
17 to fit their individual tastes.

18 Today there are approximately 55 million adults
19 who enjoy tobacco in one form or another. I do not
20 know whether you smoke, nor is it any of my business,
21 but it is my business to accommodate my smokers to the

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1 high standards and atmosphere that we have achieved.

2 This cannot be done if my employees are not
3 permitted to smoke on the job. I can fully appreciate
4 that smoking on the job can be a safety hazard in
5 certain situations evidenced by the tragic school fire
6 that apparently prompted part of this proposed
7 regulation. On the other hand, I know of two
8 individuals who were burned to death in their car
9 following an accident when they were unable to
10 extricate themselves from their seat belts in time to
11 get out.

12 Certainly, the effort to get greater seat belt
13 usage would not be lessened because of this one
14 incident.

15 Government is becoming more and more intrusive
16 into how business is being run, especially small
17 business. In our society of free enterprise, let
18 management determine how to operate. If they do not
19 operate to their clients' and customers' satisfaction,
20 they will not succeed and they will not remain in
21 business.

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1 My understanding is that government's place to
2 help business, not to destroy it. This proposed
3 regulation to prohibit employee smoking in the
4 workplace would surely put my company and every other
5 tobacconist out of business. I think I can speak for
6 most small businesses who are inundated with government
7 regulations today to a point where so much time is
8 spent in trying to accommodate these regulations and
9 what have you that they could far better operate their
10 businesses were it not for all this government
11 intrusion.

12 I'm glad to answer any questions.

13 Yes, sir?

14 MR. LAWSON: Beyond the customer smelling,
15 pinching for moisture of pipe tobacco, do you have
16 occasion where customers will ask for a small sample to
17 light up a pipe and would, in fact, smoke in your
18 workplace as part of the purchase transaction?

19 MR. FADER: They will, in looking for a blend,
20 they will try this or try that or try another one until
21 they can find what they feel is the right blend for

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1 them.

2 MR. LAWSON: What you say is they may purchase
3 samples of different blends and try it, but would they
4 actually take a portion of a pipeful and light up each
5 of the blends in your establishment?

6 MR. FADER: It's part of the service that we give.

7 MR. LAWSON: Okay.

8 MR. FADER: Yes, ma'am.

9 MS. PATRICK: You said your employees have to
10 smoke as part of the job? In what context do the
11 employees smoke?

12 MR. FADER: No, I said they do not have to smoke,
13 but at the same time the vast majority of our employees
14 do smoke. They enjoy smoking. And it's, you know, our
15 business is tobacco. We are in the cigarette business.
16 We are in the custom blended pipe tobacco and cigar.

17 CHAIRMAN MARSHALL: Any other questions?

18 Well, thank you, Mr. Fader.

19 MR. FADER: Thank you very much.

20 CHAIRMAN MARSHALL: We appreciate your comments.

21 MS. WEST: I'll call on Norman Astel and

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1 representatives of the Maryland Farm Bureau.

2 MR. ASTEL: Mr. Chairman and members of the Board,
3 I'm Norman Astel with Maryland Farm Bureau. I'm not
4 going to say anything, but I'm going to turn it over to
5 three tobacco producers.

6 Thank you.

7 MR. PHIPPS: Thank you, Norman.

8 Chairman Marshall, members of the Board.

9 I'm Mike Phipps. Earl Griffith and Oscar Grimes
10 were not able to be here. One was here earlier, but on
11 a pretty day like this it's hard for a farmer to stay
12 indoors, and I do have Mr. Buddy Bowling and Mr. Steven
13 Walters from the Southern Maryland Tobacco Board who
14 will make comments.

15 As Norman said, I'm a farmer. Our families down
16 in southern Maryland have been growing tobacco since
17 1600s. Tobacco is the major reason we had the state of
18 Maryland. It was used as currency in the early days.

19 No one paid me to be here. I'm not defending any
20 organization. I don't have any statistics with me.
21 I'm not a scientist, thank God, but I'd just like to

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1 give some personal insight.

2 This is the first time I've spoken before a Board
3 so you'll have to bear with me.

4 Our family grows tobacco and I don't smoke. I
5 never tried it. I tried chewing once and I swallowed
6 some and that took care of me.

7 (Laughter.)

8 MR. PHIPPS: If that sounds like I'm not
9 supporting my industry, but we used to have dairy
10 cattle, I and I don't like the taste of milk either,
11 so --

12 I came here basically because, no harm to the
13 author of this, I think this is a bad proposal. There
14 is a great difference between being concerned about
15 health and being zealous. The Big Brother mentality
16 seems to be present here, in my opinion, based on the
17 wording of this proposal.

18 What is a workplace? Does that include a farm
19 employee out on a hundred-acre field driving a tractor?
20 A carpenter out in the construction site, whether it be
21 in the city somewhere or out in a subdivision building

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1 a home? A salesman in his car?

2 I think we need to have some answers to this as
3 well.

4 There are many people who shouldn't smoke, no
5 doubt about this, and I understand this is a very
6 emotional issue with many; however, there are examples
7 of folks -- I talked to an 85-year-old fellow the other
8 day that's been smoking all his life. I told him
9 you're supposed to be dead by now, but he didn't
10 believe me.

11 I've also seen four-year-old people have lung
12 cancer that never smoked a cigarette in their life.

13 If you can't tolerate smoking, you shouldn't
14 smoke. The same thing is true of cholesterol. There
15 are people that have trouble with cholesterol. They
16 can look at something fattening and their cholesterol
17 level goes up. Others can eat lard almost every day
18 and have no problem at all. I've got an 88-year-old
19 grandfather ate fat meat all his life and he's still
20 going strong.

21 Same is true of sugar diabetes, cirrhosis of the

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1 liver.

2 But does this mean that the state, for example,
3 with cholesterol, if we, as a precedent with this,
4 would we go into requiring vegetarian diets for all
5 employees in the state at the workplace? Or should the
6 state require all of us to be, as the gentleman said
7 that talked about Seventh Day Adventists? I don't
8 think so. I hope not.

9 I've always been in favor of designated smoking
10 areas. I don't like smoke in my face, but I think that
11 is a decision of the employer and not the state and
12 with that, I'll just leave you.

13 I think the biggest thing we need to look at is
14 all these automobiles, people building all across the
15 state taking farmland away and driving 50 million miles
16 to work. If I had my choice, I'd rather have everybody
17 in here smoking a cigarette or a pipe than have one
18 automobile in here running.

19 And with that, I will turn it over to
20 Mr. Buddy Bowling.

21 MR. BOWLING: Mr. Chairman, members of the

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1 committee, my name is Gilbert Buddy Bowling.

2 I am a tobacco farmer. I am also affiliated with
3 the Tobacco Warehouse. I am the third generation of
4 the Bowling family that has been involved in tobacco
5 production. I have a few statistics too. I don't know
6 whether you're aware of them or not, but I am going to
7 give you them to make them part of the record.

8 There are 1,300 farms in southern Maryland, 10,000
9 acres of tobacco grown on southern Maryland soils, \$204
10 million industry. We have six major buyers. Most of
11 those buyers are export buyers, and we do have some
12 domestic buyers. Tobacco generates \$140 million in
13 taxes in the state of Maryland.

14 And I'd just like to make a few comments in
15 reference to smoking in the tobacco warehouse. I
16 think this could -- if this bill does pass, it could
17 create tremendous economic burden on tobacco warehouse
18 owners because there are employees that do smoke.
19 There are people that come in there and do smoke.

20 With that, I'd like to thank you for giving me
21 this opportunity to speak. I'd be certainly glad to

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1 address any questions if you have any. I will turn it
2 over now to Mr. Steve Walter.

3 MR. WALTER: Good afternoon, Mr. Chairman, and
4 members of the Committee.

5 My name is Steven Walter. I'm president of the
6 Southern Maryland Tobacco Board, and that is a
7 nonprofit farmer board that promotes tobacco and mainly
8 export because we are -- Maryland Tobacco is an export-
9 based commodity basically.

10 I'd like to say -- I won't repeat what they've
11 said, and you have my comments written there -- other
12 than I'd like to say it would be right hard for us to
13 police smoking on a farm in particular. We have
14 employees out. I mean, my farming operation covers,
15 oh, I don't know how many square miles, and when you've
16 got somebody out there you don't know whether they're
17 smoking or not, and I would like to know, for one
18 thing, would I be subject to a fine if an employee is
19 caught smoking?

20 And the employees that we have, a lot of them
21 don't have many pleasures in life -- I hate to say this

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1 -- because we can't pay them but so much, but what some
2 of them do do is smoke. It would be almost ridiculous
3 to say on a tobacco farm you can't smoke.

4 That's my main point.

5 The other thing I'd like to say is, how many
6 people here know what the number one cause of death is
7 in the workplace? It's from lead, generally fired from
8 the end of a gun. That was just published here not too
9 long ago.

10 All right, thank you very much for your time.

11 CHAIRMAN MARSHALL: Any questions?

12 MR. QUIDAS: You said 1,300 farms. Is that
13 tobacco farms?

14 MR. BOWLING: Tobacco farms in Southern Maryland.
15 I'd also like to bring it to the Committee's attention
16 that we're talking about, in terms of the counties,
17 Charles, St. Mary's, Anne Arundel, Prince George's, and
18 Calvert County.

19 MR. NOBILE: Is that the only cash crop for this
20 land?

21 MR. BOWLING: No, that's not the only -- that's my

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1 major cash crop though. I do raise other commodities
2 such as corn, soy beans and a few vegetables, and I do
3 have some livestock.

4 MR. NOBILE: Also for you?

5 MR. PHIPPS: Tobacco is our major crop, yes, sir.
6 It's a major crop in southern Maryland.

7 MR. NOBILE: I'm talking about you personally.

8 MR. PHIPPS: Yes. We have some cattle too. Of
9 course, meat will kill you too if you eat it long
10 enough. You know, eggs and everything will kill you.

11 MS. GILFORD: I'd like to know, material you
12 presented here, the statistics, have you furnished
13 those to us in writing?

14 MR. BOWLING: No, I don't, ma'am. I had them
15 written down, but I will certainly provide them to you.

16 CHAIRMAN MARSHALL: We'd appreciate that.

17 MR. BOWLING: Thank you.

18 CHAIRMAN MARSHALL: Another question?

19 MR. QUIDAS: One more question. What -- most of
20 those 1,300 farms, what would you say that the
21 percentage that tobacco encompasses?

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1 MR. BOWLING: I would say 80 percent.

2 MR. PHIPPS: A large percentage.

3 MR. WALTER: Some of them are diversified as Buddy
4 said. We are. We represent -- it represents about
5 half of our income on my farm. We work about 1,200
6 acres of crops. We also grow vegetables and grain, but
7 it provides about half the actual net income.

8 MR. QUIDAS: So you think it would be at least
9 half on most all farms?

10 MR. WALTER: Probably a lot of them one thing they
11 do grow is tobacco. That's their main crop, and I'd
12 say half. It's probably about 80 percent of a lot of
13 them, 80 t 90 percent as you spread them out on the
14 farms of southern Maryland.

15 MR. PHIPPS: Certain counties are higher than
16 others.

17 CHAIRMAN MARSHALL: Thank you very much.

18 MR. PHIPPS: Thank you.

19 MS. WEST: Thomas Saquella.

20 MR. SAQUELLA: Mr. Chairman and members of the
21 Board, my name is Tom Saquella, and I'm president of

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1 Maryland Retail Merchants Association.

2 We've already distributed a statement. I think
3 it's been distributed already. It was dropped off
4 earlier this morning.

5 We have some serious reservations about the
6 proposal. I'll try to be very brief, just summarize
7 it. Some of my points have already been made.

8 Our first concern is, I think the proposal as it's
9 presently drafted puts the retail employer in a very
10 difficult, if not impossible, situation.

11 The regulation refers to "in the place of
12 employment." If one follows the Workers' Compensation
13 law, that includes parking lots, loading docks and
14 delivery trucks. I don't see how a retail employer or
15 any employer can be responsible if an employee smokes
16 in a parking lot at his or her store or if even at a
17 large mall where you would still come under the
18 jurisdiction of the employer in terms of Workers'
19 Compensation law. I think that same theory would
20 extend to this proposed regulation.

21 There's also no flexibility. We already heard

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1 from Mr. Fader. That was one example I was going to
2 use, a tobacco store. Another example that I think
3 you've got to be concerned, especially when you're
4 talking about small employers, and about 80 percent of
5 my members employ ten or less people. That's the
6 nature of the industry so essentially speaking for
7 small employers you've got the situation where a father
8 permits his son to smoke in the home but not in the
9 workplace, and you -- I have a lot of literally ma and
10 pa stores which are family run, all the family
11 participate as employees with the father or mother as
12 owner.

13 There are all sorts of legal questions. I know
14 earlier this morning you had some comment about the
15 federal MOSH law and OSHA law. I should point out that
16 there is a specific law in Maryland statute prohibiting
17 smoking in the retail store, but that law also
18 specifically exempts the work areas of retail stores
19 that are nonaccessible to the public.

20 I would question -- there's some legal question as
21 to whether you can use a regulation, a state regulation

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1 to override an existing state statute. I would
2 certainly say even if that is legal sufficiency, that
3 it's not wise policy and such an issue should be
4 brought to the General Assembly to reconcile.

5 I think my major point is, and this is going to
6 allude to a couple other people who have come before
7 me, is I really think the proposal is somewhat
8 unnecessary. We've heard from large employers who are
9 already doing this already, and, by the way, as those
10 proposals were described to me, they would all be in
11 violation of this proposed regulation because they send
12 the employees outside the building but still within the
13 workplace and the employment place, so they would be in
14 violation of this regulation.

15 The research network, the polling we had done,
16 that's been explained to you earlier. I think most
17 business people feel there's enough regulation and a
18 lot of employers are already moving in to provide both
19 smoking and nonsmoking areas for their employees, and
20 they recognize that. It's a question, I think, mostly
21 of lifestyle and sound employee, employer relations.

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1 And I think government getting involved would just
2 be counterproductive, so no other points I really want
3 to make, but I would emphasize I think when you're
4 thinking about this you've got to look at the small
5 employers -- there are many, many thousands of
6 different small employers -- and try to bring it back
7 to their level as to how this can be done because there
8 are fines, as you all know, and I think it would be an
9 administrative nightmare and cause a tremendous
10 negative reaction in the employer community.

11 CHAIRMAN MARSHALL: Thank you, Mr. Saquella.

12 Any comments, questions?

13 Thank you very much.

14 MS. WEST: Margareta Crampton.

15 MS. CRAMPTON: Good afternoon, Mr. Chairman.

16 Thank you very much for allowing us the opportunity to
17 testify today on the proposed regulation.

18 I'm Margareta Crampton, legislative representative
19 of the Maryland state and D.C. AFL-CIO.

20 There is a number of things that I'd like to
21 discuss today. You have already received the statement

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1 that we have submitted, so I'm not going to go down it
2 in its entirety. I'm just going to breeze through it
3 if it's okay with you.

4 First, what I do want to say is that the unions,
5 of which we are a part of, have a legal responsibility
6 to represent the interests of all their members, the
7 workers who smoke and nonsmoke, and it's not our
8 position to tell them whether they can or can't smoke.
9 Now the unions are being faced with legislation or
10 unilaterally imposed employer policies that forbid
11 smoking on the job and infringe on the rights of
12 workers who smoke.

13 The AFL-CIO believes that issues related to
14 smoking on the job can best be worked out voluntarily
15 in the individual workplaces between labor and
16 management in a manner that protects the interests and
17 rights of all workers and not by a legislative mandate,
18 as a previous speaker, Mr. Amass, has spoke of.

19 The AFL-CIO is committed to improving the working
20 conditions and health of all our workers. We urge our
21 affiliated unions to continue their efforts to reduce

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1 workplace hazards and to provide voluntary assistance
2 and education to workers who smoke as part of the
3 ongoing comprehensive program to improve the health of
4 all our workers in the state of Maryland.

5 The Maryland State and D.C. AFL-CIO is pleased
6 that this advisory board is turning its attention to
7 the indoor air environment. However, after reviewing
8 this proposed regulation, we have concluded that it
9 does not adequately provide the protection working men
10 and women need in the indoor work environment.

11 The average worker spends about 90 percent of his
12 or her time indoors. Given this statistic, it is vital
13 to look at the studies conducted by the National
14 Institute of Occupational Safety and Health which
15 reported that only 2 to 4 percent of the indoor air
16 quality problems could be traced to tobacco smoke.

17 Restricting a regulation to only tobacco smoke is
18 discriminatory and ignores the fact that many of our
19 workers are dangerously exposed to a range of other
20 hazards and provides no relief to thousands of working
21 men and women. At the initiative of the National AFL-

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1 CIO, federal OSHA is preparing a standard on indoor air
2 quality. Last year the agency accepted more than 1,200
3 responses to its request for information on the indoor
4 air quality issue. It is unclear what solution to
5 indoor air quality federal OSHA will propose, but it
6 could preempt a state OSHA standard on indoor air
7 quality.

8 Action by Maryland MOSH on a lesser standard would
9 be premature and create a confusing, possibly even
10 conflicting, approach to the problem.

11 We believe this duplication should be avoided.

12 And I'm only going to read one more statement and
13 then I'm going to touch on four issues that I think I
14 need to touch on, and then I'm going to turn it over to
15 a couple of our experts.

16 We encourage the Board to make a real difference
17 for the health and safety of Maryland workers and to
18 undertake a more comprehensive effort to address the
19 entire scope of the indoor air quality problems while
20 respecting the right of workers.

21 The things that I want to touch on is four issues.

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1 A smoking ban ignores the broader problems of workplace
2 indoor air quality. A study by the National Institute
3 of Occupational and Safety and Health -- which I just
4 stated a moment ago -- reports that only 2 to 4 percent
5 of the indoor air quality problems could be traced to
6 tobacco smoke.

7 This was reenforced by a study done last year by
8 the American Federation of Government Employees which
9 concluded that 95 percent of the Social Security
10 Administration workers that are right here in Baltimore
11 and many who work daily and regularly in the building
12 who say they experience work-related illnesses,
13 attributed to the indoor air quality. And it's unusual
14 but that building is smoke-free. You can't smoke in
15 the building, so there's a little bit of a conflict
16 there as to how that problem could exist there then.

17 Also, the broader indoor air quality alternatives
18 and it's not a single-source solution, and we should
19 look at what that should be.

20 Also, a fine assessed against violators is an
21 unrealistic solution. The Maryland OSHA standard would

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1 levy a \$5,000 fine against employers violating the
2 rules. You're putting employers in a position of
3 policing what their employees are doing on the worksite
4 rather than continuing to let them be productive and
5 let the work go as it should.

6 We have a concern with that.

7 Different workplace environments require different
8 needs, and these solutions are best achieved when
9 workers and management set policy.

10 OSHA, as I said, is preparing a standard on the
11 issue which would preempt whatever Maryland would do.
12 Therefore, the federal OSHA has been working on a
13 comprehensive indoor air quality standard, and is
14 supposed to be coming up with what we have heard
15 shortly in the future, near future.

16 With the Maryland OSHA, I think we should wait for
17 the federal standard to be published before moving
18 forward. The federal OSHA standard would be very broad
19 dealing with all air constituents and expected to make
20 a state standard unnecessary.

21 Last but not least, labor-management collective

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1 bargaining is the solution. The OSHA proposal is an
2 unnecessary and inappropriate intrusion into the area
3 of employer, employee relations. Most of the people
4 spend most of their waking hours working and all of a
5 sudden now we're going to mandate to them what they can
6 do on their company time while they're working to try
7 to make a living to pay taxes in this state.

8 I think this is wrong, and I think it needs to be
9 looked at a little closer. I thank you very much for
10 the opportunity to speak with you today.

11 CHAIRMAN MARSHALL: Thank you.

12 MS. CRAMPTON: And I'd like to now turn it over to
13 Neil Wilford from the sheet metal workers.

14 CHAIRMAN MARSHALL: Mr. Wilford.

15 MR. WILFORD: Thank you.

16 My name is Neil Wilford. I'm the business
17 representative of the Sheet Metal Workers, Local 100,
18 which covers the entire state of Maryland.

19 I've served an apprenticeship and been a
20 journeyman and taken extensive courses for 32 years
21 with the Sheet Metal Workers.

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1 I'd like to first thank MOSHA and Brother Koellein
2 who's always been there. I'm a construction worker and
3 we have the major causes of death in all the
4 occupations, so I know what safety is all about,
5 believe me, and I'd like to thank all of his staff too.

6 But one of the things I'd like to say is the Sheet
7 Metal Workers have been very interested for years
8 because of the Legionnaire's disease and all the other
9 things, not just smoke, but, as Ms. Crampton said, a
10 lot of other things. We're concerned about the indoor
11 air quality.

12 Now, I've been involved, like I say, for 32 years.
13 That fellow that had the screen up there pointing that
14 little picture at all the things there, let me just
15 give you some facts in regard to that.

16 Them little boxes that were turning the air around
17 in that air, that's circulating air, not changing air.
18 Changing air means just what it says, to take all of
19 that air out of the room, exhaust it outside and bring
20 fresh air in. When he said that the thing was
21 sparkling up the dust, he was not changing the air. He

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1 was getting air samples from the same air that was in
2 there.

3 And also about the doorway thing, if people walk
4 through the smoke, they're going to breathe it in. The
5 air is supposed to come out of the doors. If it's not,
6 it's not a proper system because if that was the case,
7 every time the door opened, the heat would come out of
8 the building -- I mean, the cold air would come in as a
9 reverse, as the heat is supposed to come out. So any
10 smoke is going to be blown out of the door. It's not
11 sucked into the door.

12 So they're just simple heating and ventilating
13 techniques.

14 And what we have done is through our international
15 we have developed studies to take and have clean indoor
16 air quality. I would like to ask Mr. Alex Willman,
17 who's from the National Energy Institute as a division
18 of the Sheet Metal Workers International who is the
19 expert in the field.

20 Thank you.

21 MR. WILLMAN: Thank you. Mr. Chairman, members of

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1 the Board. My name is Alexander Willman. I am a
2 licensed Maryland state professional engineer. I was
3 born in the state of Maryland and my first home was
4 purchased in the state of Maryland.

5 I've been in the heating and air conditioning
6 industry for 20 years and my purpose today is to
7 represent the National Energy Management Institute
8 which is a nonprofit labor/management trust of the
9 sheet metal industry.

10 Both here in Maryland and on a national scale, the
11 National Energy Management Institute, NEMI, has been
12 actively involved in the identification of practical
13 solutions to indoor air quality problems. During this
14 time, we've investigated hundreds of actual buildings,
15 not theoretical buildings that you can draw straight
16 lines on, but actual buildings.

17 We concluded from this that the primary cause of
18 worker indoor air quality complaints focuses on
19 inadequate ventilation system operation.

20 In most buildings we've investigated, the best
21 solution to the complaints and listening to the people

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1 talk about them, is not banning a single source but by
2 looking entirely at the design, the operation, the
3 maintenance and the proper methods of bringing
4 standards into the ventilation system -- whether or not
5 smoking is permitted in that building.

6 Our conclusion has been verified by the National
7 Institute of Occupational Safety and Health, NIOSH,
8 whose statistics you've heard earlier today.

9 Based on our practical experience, NEMI believes
10 that workers in Maryland will be better served by
11 enacting legislation that calls for a comprehensive
12 review and appraisal of all airborne constituents, one
13 that relies on effective ventilation system design,
14 installation, operation and maintenance.

15 Our experience has led NEMI to believe that it's
16 possible and practical to design and install
17 ventilation systems that effectively isolate one area
18 from another. This is done right now every day of the
19 week in hospitals where you have to isolate those
20 operating rooms from other areas of the building.

21 The state of the knowledge in ventilation system

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1 design means that that can be done in the majority of
2 buildings in the state of Maryland. This has been
3 confirmed by the American Society of Heating,
4 Refrigerating, Air Conditioning Engineers, and their
5 standards, ASHRAE Standard 62-1989, is rapidly becoming
6 accepted nationwide by the building code authorities
7 who have looked at this very seriously, and it's
8 currently the model for good indoor-air quality for
9 places from movie theaters to classrooms to hospitals.

10 Effective ventilation technology can be called
11 upon to separate air flows so that one specific area
12 does not mix with another. This is, again, one of the
13 primary techniques that is advocated in writing by the
14 Center for Disease Control to prevent the spread of
15 tuberculosis.

16 Depending upon building design, this may involve
17 only minor modifications to the ventilation system. In
18 some cases, more changes are needed.

19 One example of this type of ventilation and with a
20 project that NEMI was instrumental in completing, were
21 the Blue Cross and Blue Shied Headquarters Building in

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1 Detroit, Michigan, a health-related organization. Blue
2 Cross and Blue Shield had a smoking ban in effect but
3 changed it when we supervised the installation of an
4 effective ventilation system for the smoking area of
5 their employee cafeteria.

6 Based upon the ASHRAE standards, this project now
7 allows their workers to choose whether or not to smoke
8 in selected areas of the building.

9 Meanwhile, the proposal before us today calls for
10 the ban of smoking in all areas, raises an important
11 concern. Regulations of this type often limit the
12 focus to one area instead of looking at the broader,
13 more comprehensive solution.

14 For example, our office also work with the
15 American Federation of Government Employees in the
16 Social Security Administration Building in Richmond,
17 California, where smoking had been banned for several
18 years. We became involved after the outbreak of
19 Legionnaire's Disease that killed two people in 1991
20 and rendered several other workers severely ill as a
21 result of exposure to Legionnella bacteria.

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1 Again, this was due to poor indoor air quality in
2 a nonsmoking building.

3 These and other similar experiences have led us to
4 conclude that banning smoking alone just often ignores
5 the larger comprehensive problems of poor indoor air
6 quality.

7 Again, it should be noted that OSHA, as you've
8 heard, has issued their request for information this.
9 I've personally met, along with several other members
10 of our organization, with Joe Deere last week and I can
11 assure you that an indoor air quality standard is very
12 high on his agenda.

13 Finally, if, in fact, this Board decides to move
14 forward with a proposed regulation, I would urge you to
15 review the indoor air quality regulation currently
16 being considered by Washington State Department of
17 Labor and Industry. The proposed Washington State
18 regulation drafted by an advisory board consisting of
19 labor, industry and other interested parties, not only
20 addresses smoking but also broadens the issue to a
21 comprehensive indoor air quality issue in the

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1 workplace.

2 NEMI supports the proposed Washington regulation
3 and hopes that this delegation will consider this as a
4 rational alternative.

5 In closing, I would like to confirm that NEMI is
6 looking forward to working with you in developing
7 legislation that will address effective ventilation
8 strategies for the better indoor air quality.

9 Thank you. I'll be glad to answer any questions.

10 CHAIRMAN MARSHALL: Any questions?

11 MR. QUIDAS: Do you use negative or positive
12 pressure?

13 MR. WILLMAN: It will depend upon if you're inside
14 an area where you want to remove harmful air
15 particulates, you want to have a negative system
16 relative to the surrounding areas, so that the air
17 moves from positive to negative and then out of the
18 building.

19 MR. QUIDAS: You've got to have more than one
20 duct.

21 MR. WILLMAN: You have to have -- as Mr. Wilford

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1 explained, you want to have your buildings in a
2 positive ventilation mode. It's been confirmed by a
3 majority of the scientists who have looked at
4 ventilation strategies for buildings. Despite the fact
5 that we have an open door here, we're got lots of
6 outside air, most modern buildings if you go to ask
7 ventilation engineers, you want to keep that building
8 in a positive mode to a half inch of water gauge.

9 MR. QUIDAS: Now, the gentleman that was here
10 earlier this morning said you used negative.

11 MR. WILLMAN: Well, I beg to differ with him.

12 MR. WILFORD: To give you another example on that,
13 just like when you go into a hospital and you go to see
14 your friend that's in that room, when you open that
15 door, the air is going to stay -- go from the hallway
16 into that room. You don't want those germs coming out
17 of that room where the sick patient is out into the
18 hallway.

19 So there's a negative pressure that the pressure
20 is stronger in the hallway so when you open the door
21 the air goes into that patient's room, not the reverse

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1 because then you're going to put all the pollutants out
2 into the hallway where everybody's going to breathe
3 them.

4 This is an efficient way the building should
5 operate because most of the cases, like they said about
6 smoking is one thing, but how many people have been
7 into a room where you've got that copy machine running
8 all day and the fumes are about ready to gag you or the
9 cleaning person has got the chemicals on the rugs or
10 the curtains, or what have you?

11 There's so many other things that you've got to
12 take and get the air out of the building and bring the
13 fresh air in. When everybody was so energy
14 conservation minded, they just shot off that fresh air
15 coming in because it was too costly to heat it, and
16 only thing they did was just recirculate over and over
17 again that stale, smoked, diseased, fumes,
18 carcinogenic, whatever.

19 What we need is a good indoor air quality program
20 for everybody.

21 CHAIRMAN MARSHALL: Any other questions?

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1 DR. deSILVA: How much is it going to cost to put
2 in the engineering changes that you are proposing?

3 MR. WILLMAN: A typical Baltimore row house that
4 has been now turned into a business, first of all, has
5 to have an air conditioning system to provide the
6 thermal comfort that's needed by the people, not only
7 who work there, but also the customers who come in. If
8 it is a typical retail type of operation with the door
9 opening and closing many times during the day, the cost
10 to modify that to meet the current ventilation
11 standards is going to be minimal.

12 DR. deSILVA: How minimal?

13 MR. WILLMAN: Probably in the order of a couple
14 hundred dollars.

15 DR. deSILVA: Say out in the rural areas something
16 used in a residential home if it were being remodeled
17 for business use, how much would that cost?

18 MR. WILLMAN: There are now available air to air
19 heat recovery devices that are being advocated. They
20 are being mandated in Canada for use in new home
21 construction that can, again, be installed in a

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1 outlying home to bring in the necessary amount of
2 outside air for \$200 to \$300. Honeywell produces
3 these. Other major manufacturers produce these
4 products that can bring in air from outside and exhaust
5 the air from inside the building that then heats that
6 air so you're not losing energy. You're bringing in
7 outside air that is heated when it comes in.

8 MR. WILFORD: More or less it's like a timer that
9 you would put like on your house. You want the lights
10 to come on at a certain time, like if you were away and
11 things like that. You know how they'll say that
12 somebody's not home, but you just put a little timer,
13 you plug it in. It makes the lights come on and turns
14 them off.

15 Only thing you do is increase it. You increase
16 the air change, but get the old air out and bring the
17 clean air in. It's no more than putting a timer on to
18 the thing in most cases.

19 DR. deSILVA: I'd be very interested in seeing
20 those specifications.

21 MR. WILMAN: We can provide any information you

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1 need.

2 CHAIRMAN MARSHALL: Thank you, gentlemen, very
3 much.

4 MS. WEST: Clemis Kaikis. He's not here.

5 CHAIRMAN MARSHALL: After the next speaker we're
6 going to take about five. Now, I don't mean seven,
7 eight, nine or ten. We're going to take five to let
8 everyone get up and kind of stretch at the table here
9 and relieve themselves if they have to, but no more
10 than five.

11 MS. WEST: I'm going to call on Daisy Jackson.

12 MS. JACKSON: Hi. Thank you for letting me speak.

13 I'm not here representing R. J. Reynolds, which is
14 on your paper. I am representing myself, which is a
15 small retail in the Baltimore City, and I'm not going
16 to rehash what the small business peoples have already
17 told you. I am on accord with them.

18 So what I am saying is that I agree with them, and
19 I hope that you don't go with this policy banning
20 cigarette smoke because we are a group of small
21 businesses and I represent them in the city of

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1 Baltimore and that's our livelihood. We are legal, and
2 I hope that you consider to give us a chance not to ban
3 smoking in the workplace because I do not smoke, but
4 some of my employees, but I require for them to go
5 outside to smoke, so I am saying that maybe we can
6 educate, do more educating our people to either stop or
7 cut back.

8 So on my behalf, thank you for letting me speak,
9 but I am with the group of the retail, small business
10 people.

11 Thank you.

12 CHAIRMAN MARSHALL: Thank you, Mrs. Jackson.

13 Anyone have any questions?

14 Let's take a quick five and we'll be right back.

15 (Whereupon a short recess was taken and the
16 hearing was then resumed.)

17 CHAIRMAN MARSHALL: Thank you. We'll now
18 reconvene. We're ready to proceed with the hearing.
19 Ms. West.

20 MS. WEST: I'm not sure if this person is here.
21 Jolanda Janczewski.

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1 DR. JANCZEWSKI: Good afternoon. I'd like to
2 thank you for this opportunity to come and speak with
3 you today.

4 As you heard, my name is Dr. Jolanda Janczewski.
5 I am president of Consolidated Safety Services, Inc.,
6 which is a safety and occupational health consulting
7 firm that provides services to help resolve
8 occupational, trans-portion and public safety and
9 health issues.

10 Our corporation conducts on-site inspections,
11 training and programmatic evaluations for clients
12 throughout the United States, including U.S. government
13 entities such as the Centers for Disease Control, the
14 Department of Defense, the National Institutes of
15 Health, the Food and Drug Administration and OSHA.

16 As part of our services, we conduct indoor air
17 quality evaluations and design remediation strategies.
18 We are based in the Washington, D.C., metropolitan area
19 with our headquarters in Oakton, Virginia, and
20 operating centers throughout the United States.

21 I'm here today to speak to you from three

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1 perspectives. First, as a career occupational safety
2 and health specialist. Second, as an owner of an
3 indoor air quality evaluation firm. And, third, as an
4 owner of a private business.

5 I have been working in the area of occupational
6 safety and health for over 16 years and I base my
7 career on providing safe and healthful work places for
8 our nation's employees. In addition, I have a Ph. D.
9 in environmental health and public policy, which
10 provides me with particular expertise in evaluating
11 public policy and its relation to sound, scientific
12 evidence.

13 On this note, I am concerned that your total
14 proposed smoking ban does lack sufficient scientific
15 evidence from which to form its basis. Although the
16 EPA's report on ETS, as well as other government
17 studies, have addressed second-hand smoke, as we've
18 seen today, these reports fail to provide us with the
19 data needed for establishing polices in workplaces.

20 While personal opinions on the issue of smoking
21 may want to guide all of us in one direction,

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1 occupational safety and health standards must be
2 carefully guided by unemotional, scientific
3 foundations, using public or personal opinions to drive
4 public policy has gotten us all into a lot of trouble,
5 and it's recognizably dangerous as it does set a
6 precedent for overregulation and needlessly expensive
7 and ineffective solutions.

8 The current data available for the risks
9 associated with ETS in the workplace is lacking at this
10 time. It would, therefore, be prudent to provide OSHA
11 with sufficient time for conducting research on the
12 subject. It is important, also, to recognize that as
13 we've heard today, OSHA has identified the need to
14 address ETS in the workplace, but under the broader
15 context of improvement of indoor air quality.

16 As an expert in evaluating indoor air quality
17 problems, I do not disagree with OSHA's approach, as it
18 speaks to a systems approach for reducing or
19 eliminating the myriad of contaminants produced in an
20 indoor environment.

21 As data from NIOSH has shown, as well as a variety

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1 of other research studies, and as well as one that we
2 had conducted in 1988 for AFGE, ETS represents less
3 than 3 percent of the total indoor contaminant
4 problems.

5 So it really makes no sense to expend such great
6 efforts to eliminate a relatively minute part of the
7 problem while you're virtually ignoring the broader
8 issue.

9 Substantial research as well as indoor air
10 standards published by ASHRAE do support that adequate
11 ventilation is sufficient in reducing all indoor air
12 contaminants to acceptable levels.

13 If your intent here is to improve indoor air
14 quality, it would certainly be wiser and more effective
15 to propose standards for adequately designed, operated
16 and maintained ventilation systems in all work places.

17 As the gentleman from NEMI had just mentioned
18 earlier, if you'll take a look at the Washington state
19 bill that they're having the hearings this week about,
20 I think you could see a real good bill that would
21 address the broader issue, and including ETS.

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1 Now, as an owner of a private business I am
2 concerned with how such standards as those you propose
3 will adversely affect my employees. Although we do not
4 currently have an operating center in Maryland, we do
5 have one in Pennsylvania in Virginia and we are
6 currently considering putting one in Maryland. But I
7 will tell you that if your standard does pass, I will
8 not move an office into Maryland and I will not hire
9 employees in this state.

10 It is my experience that total smoking bans, while
11 doing little to improve the overall quality of indoor
12 air, also cause additional problems. Our corporate
13 staff, for instance, in our office in Virginia houses a
14 number of employees who smoke. Since we have provided
15 individual offices for all of our employees, our policy
16 has been to restrict smoking to specific offices.

17 I am concerned, therefore, that we, as a private
18 employer in the state of Maryland, would not have the
19 right to establish such policies as we see best for our
20 individual employee populations.

21 By eliminating smoking in the workplace as well as

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1 our options, such as the policy that we've chosen in
2 our office, I think that larger problems could arise.

3 For example, the nature of our business calls
4 quite often for my employees to work long nights on
5 projects or proposals. Currently, many of these
6 employees work late hours into the week hours of the
7 morning. By permitting these employees to smoke in
8 their office, their productivity, their job
9 satisfaction and my return on the labor investment
10 remains very high.

11 However, should I have to force these employees to
12 leave the building to smoke, I can assure you that not
13 only will their productivity and morale drop, but it
14 will certainly directly affect their willingness to
15 work the long hours that are needed on the job.

16 Most importantly, I will be extremely concerned
17 with the security of my employees, especially those who
18 are female, who have to stand in a dark parking lot
19 late at night to smoke when I have no way to insure
20 their safety or their security.

21 As has been discussed, moving a smoking employee

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1 to an area directly outside an entrance can also cause
2 a problem for my nonsmoking employees, and also I
3 certainly do have better things to do with my time than
4 to try to monitor my smoking work staff or nonsmoking
5 work staff in the state of Maryland if I place an
6 office here.

7 Since I neither condone nor condemn the legal
8 personal habits of my employees, they are assured that
9 they are all equally valuable in my eyes. Those
10 employees who do smoke are just as important to my
11 company as those who do not. And so I have appreciated
12 as a private employer having the right to address the
13 needs of both sides of this issue through a policy
14 which meets the needs of my entire work force.

15 Although I applaud any effort which seeks to
16 improve the occupational environment, I would ask that
17 you consider all those sides which have been addressed
18 today and keep in mind that before establishing
19 policies which have such widespread impact that it is
20 much more important to get it right than to get it
21 fast.

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1 Thank you.

2 CHAIRMAN MARSHALL: Any questions?

3 Thank you for your comments.

4 MS. WEST: Maureen Lamb.

5 MS. LAMB: Good afternoon, Mr. Chairman, members
6 of the Committee. I am Maureen Lamb. I am vice chair
7 of the Anne Arundel County Council.

8 I commend you all for taking on an issue which I
9 have been with for the last six years and which is the
10 most controversial issue that I've experienced in
11 almost 12 years as a county legislator.

12 I'm here to support the proposal to ban smoking in
13 all public and private workplaces in Maryland through
14 regulation.

15 For the past six years, I have worked to get
16 legislation passed which would protect the nonsmoker
17 from the hazards of cigarette smoke. I submitted
18 legislation six years ago to ban smoking in public
19 places. The response of the public was overwhelmingly
20 in support of the legislation, but the ordinance did
21 not pass.

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1 This year I again wrote legislation which would
2 ban smoking in public places, including malls and
3 workplaces with more than 50 employees, unless a
4 designated smoking area with a ventilation system that
5 prevents air in the smoking area from passing into
6 nonsmoking areas.

7 I have brought with me a copy of the legislation
8 which finally passed. It was a hard-fought battle, and
9 the end result was only achieved by amending a piece of
10 legislation brought forth by my colleagues, who
11 intended to give an impression of meeting the demands
12 of the public for protection but which in actuality did
13 next to nothing to protect the public from second-hand
14 smoke.

15 I mention this only because I want to impress upon
16 you the need for state regulations which will provide a
17 smoke-free environment for employees of the entire
18 state. Getting legislation through county governments
19 is extremely time-consuming. It's fraught with
20 problems stemming from lobbyists with unlimited
21 resources and business organizations which will use all

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1 of their political clout to prevent any legislation
2 from passing.

3 It was my experience that these organizations
4 sometimes acted without polling their members.

5 The citizens of this state are entitled to a
6 workplace that is safe from the health dangers caused
7 by breathing second-hand smoke. It is my understanding
8 that there is a growing volume of court cases and legal
9 opinions regarding exposure to ETS in the workplace
10 that indicate that there is no legal right to smoke,
11 and that employees have a right under common law to sue
12 for a smoke-free work environment.

13 I was very surprised and pleased to have many
14 businesses call my office and support my legislation.
15 Several requested that there be no designated area
16 required in the bill. They said it was costly to them
17 in terms of time away from work, additional
18 maintenance, and insurance cost to the company incurred
19 by the employee who smokes and develops smoke-related
20 illnesses.

21 Every smoker costs his or her company at least

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1 \$1,000 a year because of the decreased productivity and
2 increased health care cost. These businesses preferred
3 a total ban over requiring a designated smoking area.

4 In addition, businesses have made it clear to me
5 that they would like a total state ban because it gives
6 everybody in every county a level playing field.

7 In conclusion, it has been my experience after six
8 years of pushing legislation at the county level that,
9 one, the public supports a smoke-free workplace. By
10 far, the majority of businesses, small and large,
11 support a total smoking ban in preference to allowing
12 smoking in designated areas.

13 The cost of allowing smoking in the workplace is
14 expensive to the employer, the employee, the county and
15 the citizens in the state of Maryland.

16 I urge the state to ban smoking in the workplace
17 so that all employers in the state of Maryland will be
18 required to provide a smoke-free environment for their
19 employees.

20 And I thank you very much and I'd be glad to
21 answer questions.

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1 MR. LAWSON: You mentioned overwhelming businesses
2 that have requested and have public support for a
3 complete ban on smoking. Does your office have any
4 statistics on the number of responses that have come in
5 that you can provide to the Board?

6 MS. LAMB: I would say that individual businesses
7 who have called my office, yes, I have a record of
8 those. The majority of the response against the
9 legislation came from organizations such as the Trade
10 Council, but it was surprising to me that they did come
11 in, many of these organizations came in, and when they
12 were questioned they did not -- they had not polled
13 their businesses.

14 CHAIRMAN MARSHALL: Any other questions? Thank
15 you.

16 MS. LAMB: You're welcome.

17 MS. WEST: Mr. Edward Dreiband.

18 MR. DREIBAND: Hello. My name is Edward Dreiband.
19 I'm with Northwest Honda. I'm the owner. And I can
20 only give you our own experience. We purchased a
21 dealership six years ago. We have 53 employees. We

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1 have a smoke-free environment.

2 We established it, started it four years ago. We
3 first tried to find a segregated area in our dealership
4 and we really couldn't find a place to segregate the
5 smokers from the nonsmokers, so we spent \$3,000 to
6 purchase a smoke eater, which is supposed to have taken
7 care of the problem, and it didn't take care of the
8 problem.

9 So we decided three years ago to eliminate smoking
10 throughout the dealership. We did so and we had the
11 participation of all the employees of our company,
12 smokers and nonsmokers, and if I were to ask any one of
13 them to come up here, smokers or nonsmokers, they would
14 tell you that it has helped them in their health. We
15 have fewer health claims than we had before. We have
16 more productive employees. Our customers are much
17 happier. We have customers who are always coming over
18 to us and complimenting us for not having smoking.

19 They appreciate not having cigarette ashes in
20 their cars. They appreciate not having the smoke in
21 the waiting areas. They appreciate not walking into a

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1 dealership and not having smoking in the sales area.

2 This year we were awarded the master of customer
3 satisfaction and we are proud of that, and one of the
4 ways that is established is Honda sends out a
5 questionnaire to customers and in that questionnaire
6 asks about the environment in the dealership. And
7 fortunately we have a very clean environment and the
8 people appreciate it, and that's one of the reasons we
9 won.

10 So that's our experience, and we really have no
11 problems at all other than the benefits of not smoking
12 in our environment and our employees are happy.

13 CHAIRMAN MARSHALL: Thank you. Any questions?

14 MR. QUIDAS: Did those persons that were smokers,
15 did they stop completely or did they stop at work?

16 MR. DREIBAND: We have -- well, when we started,
17 we had many smokers. Now, we have five people out of
18 53 that smoke in the whole dealership, so many of them
19 have stopped altogether, and they're a lot happier.
20 They've told me that. I mean, I went around today and
21 asked them, just several of them that I knew that

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1 smoked and who don't smoke now and they're much
2 happier. And had I -- it would have been much easier,
3 I think, had I -- there was a law, if there had been a
4 law stating that you can't smoke in the business rather
5 than us having to tell them they're not going to smoke.

6 MR. QUIDAS: How about the five or six that still
7 smoke?

8 MR. DREIBAND: They smoke in the outside and
9 they're not -- they don't complain about it. In fact,
10 they under --

11 MR. QUIDAS: Is their attitude --

12 MR. DREIBAND: They have a very good attitude.
13 They understand. They understand because we're very
14 customer oriented company and they understand that, and
15 they want to sell cars and they want to service the
16 cars, and our customers appreciate it, so therefore,
17 they appreciate it. There is no problem that we have
18 anyway.

19 MR. NOBILE: Do you think the system that you
20 ended up with and those particular employees going
21 outside to take a smoke break, that you're better off

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1 where you ended up than if, in fact, the smoke
2 ventilation system would have worked? Because you can
3 almost visualize what would have happened if the
4 ventilation system in that room that you said you tried
5 to create would have worked. Do you think you're
6 better off now or with the ventilated system?

7 MR. DREIBAND: Right now. It's much better right
8 now. I mean, it's cleaner. We don't have -- our
9 cleaning is -- it's cheaper to clean our dealership
10 because we don't have smoke all over the place, the
11 aftereffects of that. It's just nicer. The whole
12 environment is nicer. I don't like smoking myself, but
13 -- in case you didn't notice it.

14 MR. NOBILE: I've got another question for you.
15 Do you forbid prospective buyers to smoke when they
16 come into your dealership?

17 MR. DREIBAND: Yes. We have a sign as you come in
18 the dealership saying that we'd like to protect the
19 environment of our -- I don't remember the exact
20 wording, but it's something to the effect that we try
21 to protect the environment. We appreciate you not

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1 smoking.

2 And we have not had one problem in three years
3 that we've done this.

4 MR. NOBILE: Okay, that was my other question.
5 Okay.

6 MR. DREIBAND: We have had compliments, including
7 the people that smoke.

8 CHAIRMAN MARSHALL: Thank you very much, sir.

9 MS. WEST: Sharon Breedlove.

10 MS. BREEDLOVE: Good afternoon. My name is Sharon
11 Breedlove and I live in Clarksville.

12 I come before you today to compliment your
13 progressive commitment to achieve a smoke-free
14 environment for all Maryland workers but also to urge
15 you to please put teeth and muscle into the penalties
16 for violating standards you are currently considering.

17 As a registered nurse who works in a Maryland
18 hospital, I have a unique perspective on the problem
19 before you, and I'm also an asthmatic since diagnosis
20 in 1986, I have had little difficulty in controlling
21 the asthma until January of this year. My home

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1 environment has always been smoke-free. The mitigating
2 factor triggering an acute asthmatic episode has always
3 been exposure to smoke.

4 The lack of regulation of smoking makes it
5 impossible for any worker to obtain coverage from an
6 employer, employer's Workmen's Comp insurance, for
7 medical consequences after workplace exposure to smoke.

8 Not too long ago I attended an in-service training
9 session right outside my own hospital building and a
10 fellow employee proceeded to smoke. I felt myself
11 starting to wheeze and I had to ask this coworker three
12 times before she would put out the cigarette.

13 This mandatory session demanded my physical
14 presence and this is just one of the many scenarios
15 facing workers in this state.

16 I have faced many similar dilemmas with
17 frightening regularity. Every single time I have been
18 exposed to smoke on the job, my peak flow, which is a
19 measure of lung capacity, has dropped precipitously. I
20 have had to start another round of medications and been
21 too sick to work for a week or more. I even got

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1 admitted once for an asthmatic episode that over the
2 course of six hours could not be broken.

3 Again, my point, it is not enough to enact tough
4 regulations although it is a step in the right
5 direction. Penalties need to sting to encourage
6 management of any business to enforce these regulations
7 strictly. The proposed regulations may address the
8 problem of smoking in the workplace but without equal
9 aggressiveness in the realm of reenforcement and
10 penalty for violations by Maryland businesses, your
11 noble efforts are going to be fruitless.

12 In conclusion, I tell smoking rights advocates
13 please take note, your smoke shuts down my lungs and
14 really tramples on my right to breath and my right to
15 work.

16 Thank you for your attention.

17 CHAIRMAN MARSHALL: Thank you very much.

18 Any questions?

19 Thank you. And may I say to all of those who have
20 waited this long to make your presentation, I would
21 like to congratulate you on having the fortitude to

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1 stay here and withstand the time spent in order to have
2 your say.

3 Ms. West.

4 MS. WEST: Lori Rhoads.

5 MS. RHOADS: My name is Lori Rhoads. I currently
6 live in Columbia, Maryland. I've prepared a written
7 statement which is being passed out now. In addition,
8 I have included doctors' statements which I provided to
9 my company over the course of five years outlining my
10 medical condition and I've also included with that
11 copies of no-smoking regulations passed by Montgomery
12 County, my company, and the resolution Trust
13 Corporation.

14 I'm going to skip over a portion of the prepared
15 statement simply out of respect for the time of day and
16 the weariness of the people here. I am here to relate
17 to you how important this regulation would be to
18 individuals like me who have suffered immensely from a
19 company's calloused attitude for employee welfare.

20 I was employed by Standard Federal Savings Bank in
21 September of 1987. By December of 1987 I required

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1 medical treatment for an upper respiratory infection
2 due to cigarette smoke in the workplace.

3 Since that time, I have become increasingly ill
4 whenever exposed to cigarette smoke at Standard
5 Federal, suffering from sinus infections, upper
6 respiratory infections, bronchitis, pneumonia and
7 chronic migraine headaches.

8 This company never took an active role in
9 monitoring cigarette smoke in the workplace. Even
10 after Montgomery County passed a no-smoking ban in
11 early 1990, smoking continued in my office, even after
12 the landlord mandated no smoking in the building,
13 smoking continued in my office. Even after the bank
14 itself instituted a company-wide no smoking policy,
15 smoking continued in my office.

16 Literally nothing could compel management to
17 enforce the smoking ban, despite the very visible
18 damage to my health and the numerous physician
19 statements attesting to my need for a smoke-free
20 working environment. In fact, it was senior managers
21 who were the primary violators of the no smoking

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1 policy. I repeatedly requested the existing policies
2 be enforced or I be moved to an area where the smoking
3 ban was not so cavalierly ignored.

4 Management's tactics was to make me out to be a
5 malcontent. The human resources department
6 continuously asked me to obtain physician statements
7 attesting to my predisposition to asthma only to ignore
8 them and do nothing about the smoking. The more I
9 protested, the more I was harassed.

10 When I finally developed pneumonia and was unable
11 to work due to a cracked rib from coughing, I
12 threatened not to return to the office until I was
13 moved away from the smoking. This strategy worked
14 until the bank was taken over by the Resolution Trust
15 Corporation in October 1992. On the day the bank was
16 placed in conservatorship, approximately 75 Resolution
17 Trust Corporation and Office of Thrift Supervision
18 agents entered the building. Despite clearly posted
19 no-smoking signs in the lobby and other public areas of
20 the building, large groups of these individuals would
21 congregate to smoke openly.

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1 Finally, after several days of suffocating smoke,
2 I approached the intervention manager with the
3 complaints of numerous Standard Federal employees. I
4 informed him of the county ban on smoking and I asked
5 him to direct his staff to comply with the law.

6 The RTC agreed to stop smoking in communal areas,
7 but refused to stop smoking in private offices. Even
8 after the building manager sent several letters to the
9 managing agent to request the smoking stop, the RTC
10 officials refused to stop smoking.

11 Finally, after months of suffering with
12 bronchitis, pneumonia and severe migraine headaches, I
13 confronted the violators face-to-face and pleaded with
14 them to stop smoking in the building. One RTC official
15 responsible for the smoke told me that in consideration
16 for my health, he would attempt to refrain from smoking
17 in the building, but he would not promise not to smoke
18 on occasion.

19 At that point, I informed my supervisor the
20 company's inability to provide me with a smoke-free
21 environment left me with no other alternative but to

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1 work at home. In August 1993 I was requested to report
2 back to work in another building located in Frederick.

3 The Frederick Building had a limited smoking ban
4 which designated separate smoking areas in closed-door,
5 hard-walled offices. Unfortunately, even this limited
6 smoking ban was not enforced by senior management.
7 Again, senior managers were the primary violators of
8 the policy and nothing was done to reprimand them for
9 their behavior.

10 A full smoking ban was scheduled to take effect in
11 the Frederick office on September 1, but, given
12 management's lack of concern for enforcing the policies
13 of the past, I felt it was unlikely this policy would
14 carry any weight. While in the Frederick office on
15 August 12, I was instructed by the senior vice
16 president of human resources to either report to work
17 the following Monday in Frederick or to go on
18 disability leave.

19 I indicated my willingness to report to Frederick
20 after the no-smoking ban was in place. I also said I
21 would remain in the office only as long as the no-

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1 smoking policy was enforced. I pointed out that as we
2 spoke the current policy was being violated by a senior
3 manager in the next office. If the new policy did not
4 curb the smoking, I could not work in that office.

5 As a result of exposure to cigarette smoke during
6 that meeting, I became very ill and required medical
7 treatment for an asthma attack and emergency medical
8 treatment for severe migraine headache.

9 On September 15, 1993, I was fired from Standard
10 Federal, ostensibly for failing to report to work in
11 the Frederick office. However, I had supplied the
12 company with several physician statements attesting to
13 my incapacity to report to work as a result of exposure
14 to smoke in the workplace. In addition, I had accrued
15 over 45 days of combined sick leave and vacation time
16 which I was not allowed to use to recuperate from my
17 illness.

18 The company had pressured me to go on disability
19 leave, but when I tried to use my earned leave for a
20 documented illness, I was fired after 10 days absence.

21 I'm running out of breath.

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1 During the five years I was employed at Standard
2 Federal, I was consistently recognized as an
3 outstanding employee. My salary more than tripled and
4 I was highly interactive with senior management. Yet
5 when I tried to have existing no smoking policies
6 enforced, I was told over and over again the company
7 was not responsible for the behavior of grown men and
8 nothing could be done to force someone to stop smoking.

9 I could not compel the company to enforce its own
10 policies and I could find no one at the city, county or
11 state level who was willing to require the company to
12 enforce the county code. I was told of loopholes and
13 incongruities, of red tape and lack of jurisdiction.
14 Meanwhile, my health got worse and worse.

15 I suffered through months of incapacitation as a
16 result of severe headaches triggered by exposure to
17 cigarette smoke. For weeks I would not set foot
18 outside. I could not eat, watch television, or read a
19 book. I was a prisoner in my own home and I was in
20 continuous pain.

21 Even after the RTC intervened, the violations

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1 continued despite the RTC's own directives stating,
2 quote, "It is the policy of the RTC as part of its
3 responsibility to provide a safe and healthy workplace
4 to ban smoking within all RTC-owned and leased
5 facilities."

6 It further directs employees and visitors to
7 "voluntarily and courteously comply with the
8 requirements outlined in this policy. It is the
9 obligation of all employees to be mindful and
10 considerate of their coworkers."

11 Not only does this case illustrate management's
12 lack of concern for employee welfare, it also
13 demonstrates how individuals can be threatened and
14 harassed simply for standing for what they are entitled
15 to, namely a safe place to work.

16 I want to say at this time I am still recovering
17 from illnesses brought on by smoke in the workplace.
18 I've been given numerous medications ranging from
19 injections to inhalants to pills in order to try to
20 relieve me of my illnesses.

21 I have the same lung disease as my 75-year-old

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1 grandfather. This is outrageous.

2 To depart a little bit from the prepared
3 testimony, smoking does not -- is not a right
4 guaranteed by our Constitution or Bill of Rights.
5 Anybody who says that they have a right to smoke is
6 misinformed. People have a right to breathe, okay?

7 This regulation is a must to protect people like
8 me from harassment from employers who refuse to enforce
9 their own policies, and it is imperative that we as
10 individuals, not as coalitions or small business owners
11 or people who don't have a lot of power, have a place
12 to go to have these policies enforced.

13 CHAIRMAN MARSHALL: Thank you.

14 Any questions?

15 We thank you.

16 Ms. West?

17 MS. WEST: Is there still a Kevin Spurrior in the
18 audience? No?

19 Is there an Anthony Marquart?

20 MR. MARQUART: I'm Tony Marquart, and I'm
21 representing myself, a private citizen. I am a smoker.

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1 I represent, I guess, 20 or 25 percent of those people
2 who are not part of the overwhelming support for
3 banning smoking as the one lady alluded to.

4 But the reason I wanted to ask the gentleman from
5 NSA a question is that I was a former employee of NSA
6 when the smoking ban was initiated, and I opposed that
7 ban, since I am a smoker, and I was very actively
8 involved as a part of the administration directorate in
9 knowing what was going on.

10 That ban was done by executive fiat. That ban --
11 there were no employees who were solicited. I
12 ultimately with a small group went up to the director
13 of our agency and apprised him of this that you should
14 consider the needs of the interests of that 25 roughly
15 percent of the work force who does smoke. And there
16 was no response to that.

17 And the response ultimately from our director was
18 that if you don't like it, you can leave.

19 Now, that's consideration for the needs of 25
20 percent of your work force, and when he alluded to the
21 fact or he stated that there was no -- people were not

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1 upset about that, well, they didn't ask employees. If
2 you didn't comply, you were gone.

3 My point is that there has to be some
4 accommodation to meet the needs, reasonable
5 accommodation to meet the needs of those people who do
6 smoke and who are addicted or whatever you want to call
7 it in medical psychological terms.

8 There was none in our case, and that's what I'm
9 afraid of with a ban like this that there will be no
10 accommodation at all. We ought to explore -- there is
11 technology out there. The gentleman talked in the
12 venting business -- there is some technology to get all
13 of it out of the building, set an area aside, allow for
14 the needs of those people who wish to smoke, allow for
15 those.

16 I consider it inhumane treatment to be forced
17 outside -- I really do -- in miserable damn weather. I
18 mean, if it's raining, sleeting, snowing, 105 degrees,
19 I'm forced out there if I want to smoke, and that's
20 inhumane. We treat our pets better than that.

21 That's all I have to say. Thank you.

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1 CHAIRMAN MARSHALL: Thank you, sir.

2 Any other speakers?

3 MS. WEST: S. J. Schultz? Earl Hanes?

4 CHAIRMAN MARSHALL: Is there anyone here who
5 thinks they signed up and their name hasn't been
6 called?

7 MS. WEST: Mr. Wright, Mr. William Wright, it's
8 your turn.

9 MR. WRIGHT: I was up to 6:00 this morning
10 preparing this so I didn't want to miss my turn this
11 afternoon.

12 All that you've heard today about the harms of
13 tobacco smoke, it's really worse than what you've heard
14 so far. I have a letter that I got from Philip Morris
15 back in 1976 as a result of a letter to them asking for
16 a list of ingredients of compounds that they had
17 advertised in a full-page ad where they said there was
18 2,000 compounds in smoke.

19 And I wrote them a letter asking for this list.
20 The fellow didn't send me the list, but in his letter
21 he says there's over 6,000 compounds in tobacco smoke.

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1 The EPA report on page 3-2, says that the agency has
2 identified 4,000.

3 So everything you've heard is understated by a
4 third.

5 In this letter, they mention a report that was
6 produced for the Department of Agriculture. I have
7 submitted that for you. It does not list the 6,000
8 chemicals with your scientist type people they should
9 be able to tell you something about all these chemicals
10 that are listed here.

11 What you have to keep in mind, if I may suggest,
12 is that tobacco smoke is not one carcinogenic
13 substance. It is a compound of hundreds of cancer-
14 causing chemicals, and then you start dealing with the
15 synergistic effect of these chemicals in our body, and
16 then you consider the chemicals that are in our food
17 acting synergistically with the smoke that we breathe,
18 and then you add to that the chemicals that are in our
19 water that act synergistically with all these other
20 compounds.

21 So then you think you're safe and you go outside

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1 to breathe fresh air. Well, as you know, the Baltimore
2 metropolitan area is an acid air metropolitan area.
3 Those chemicals interact synergistically with all these
4 other chemicals that are in the smoke and that are in
5 our water.

6 One of the biggest concerns of the people that
7 I've been dealing with in trying to get prohibition in
8 Howard County and Baltimore County and with the
9 government when I was there deals with restaurants.

10 I've obtained a copy of a report that was in July
11 28, '93, and basically it says that people who work in
12 bars and restaurants have a 50 percent greater chance
13 of getting lung cancer than employees in other smoke
14 environments that are not restaurant or bar oriented.

15 I've also provided for you, and you probably have
16 it because I've heard it mentioned a couple times
17 today, is Governor Schaefer's executive order. I would
18 hope that you would take some of the language out of
19 here and incorporate it into your regulation. The one
20 half sheet of paper that I've seen doesn't really
21 describe what the problems are and what the employee is

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1 supposed to get.

2 Now, in the article that was in Mr. Fogle's
3 proclamation it said the employee is going to be
4 prohibited from smoking. That is only part of the
5 problem. You also have to protect that employee from
6 smoke that may come from another employers area in a
7 multi-employer building with a common ventilation
8 system.

9 You also have to protect that person from the
10 public who may come in and want to smoke. I have
11 suggested language to you that would deal with a single
12 employer, single building situation. Here, again, it
13 would be totally prohibited except in a separately
14 ventilated, floor-to-ceiling room type area with a door
15 and then, again, the air would be drawn into that room
16 not out.

17 When you have a multi-employer single building
18 situation, my suggestion is that the owner of the
19 building prohibit in the common areas each employer
20 prohibit and then again establish a smoking area within
21 that building separately ventilated and with the door

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1 and ventilation that would keep the smoke there.

2 One of the biggest problems I've seen, especially
3 at the mall at Westview, they don't have any signs up
4 on the doors. A lot of people who aren't keeping track
5 of all this stuff like some of us do don't really
6 realize that the mall now is a smoke-free mall because
7 the signs aren't up or because you can see through them
8 and they really aren't drawn to your attention, people
9 come in and smoke.

10 I've also provided to you a copy of Judge Murphy's
11 order prohibiting smoking in the Court system of
12 Maryland. I've also given you a memo I don't think
13 anybody else has anymore; it's dated December 10, 1985,
14 and was issued by the Attorney General's Office, and
15 it's a three-and-a-half page letter to the Clerk of the
16 Court, in Carroll County where they wanted to prohibit
17 smoking out there.

18 It is a good outline of cases that support the
19 prohibition and the conclusion then of the Attorney
20 General back in '85 was, one, that no one has a right
21 to smoke and that there is a legal basis for the

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1 prohibition which would be substantiated by the Court
2 system.

3 I'd also like to address some of the comments that
4 have happened today.

5 Usually when the tobacco lobby goes to these
6 hearings on the county and state level in the counties
7 they say let's make it a statewide ban; hold off, don't
8 do anything. They go to the state hearings and they
9 say it should be a county-controlled legislation, don't
10 do anything.

11 Today they're telling you don't make it a
12 statewide legislation; wait for the national government
13 to do something.

14 And I can bet you when OSHA comes up for their
15 hearings they're going to say don't do anything, wait
16 until the United Nations does something.

17 (Laughter.)

18 MR. WRIGHT: I mean, it just goes on and on. I've
19 been involved with this stuff for 20 years. The
20 legislatures of the county and state levels have
21 abandoned us as nonsmokers who have a concern for our

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1 health.

2 If they had at the state level done the things we
3 wanted years ago, possibly the three men that burned
4 alive back in October may be alive today. If you don't
5 take an action prohibiting smoking in the work area,
6 you're going to have more incidents like the one that
7 you had.

8 You know, we can come down here, intellectualize
9 about this stuff all day, and a lot of us do it
10 whenever we get a chance, hoping that we can persuade
11 the health authorities to do something for us. But
12 where the bottom line is, is in the hospitals, in
13 doctor's offices, treating people who have lung cancer
14 or treating the people who carry the oxygen tanks
15 around.

16 Now, I know these people here from the tobacco
17 industry and people who smoke make fun of us, and
18 that's okay because eventually they're going to pay the
19 fee of their desire to smoke. When those three men
20 died, we didn't hear their screams, and you today don't
21 hear the thousands of Marylanders like this lady over

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1 here, wherever she is, have to daily deal with the
2 problems of smoke.

3 When I was with the government, we had a large
4 room with 200 some people in it. It would just lay in
5 the room. I react three different ways to smoke. The
6 cigarette smoke, it like takes my breath away. It's
7 like a light, burning sensation.

8 Is that it? Okay? Thank you. Appreciate.

9 MR. NOBILE: I take it that three people you're
10 talking about are the custodians that were --

11 MR. WRIGHT: That's the ones that are in the
12 article, yes.

13 MR. NOBILE: Well, you've got to remember one
14 thing about that. They had warning labels on all those
15 containers. They had standard operating procedures
16 associated with using that product, and all of the
17 safety features were ignored by the people that were
18 doing it. So I'm not really sure that your statement
19 is accurate that they could still be alive today. They
20 may not be smoking, but certainly that's the reason why
21 it happened. They ignored safety precautions and just

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1 totally disregarded it -- in all fairness.

2 MR. WRIGHT: In all fairness to your comments, do
3 you know as a fact if the employer told them do not
4 smoke on the job when you are fooling with this type of
5 chemical? Do you know that?

6 MR. NOBILE: They had warning labels on all the
7 containers from what I understand.

8 MR. WRIGHT: Well, most people, if they're like
9 me, the last thing you read are the instructions, and I
10 have a feeling these people didn't read them either.
11 They shake the container up, they pour it in the
12 buckets and do whatever they're going to do with it,
13 but they don't read it. And I have a feeling though,
14 sir, if the employer, all employers tell people who
15 deal with these chemicals that you are not to smoke
16 from now until the time you get back, they won't, and
17 shouldn't.

18 And it's a shame that these three men had to die
19 to bring your Board together for Mr. Fogle to make a
20 decision when we've been out here for 20 years, at
21 least 20 years, trying to get protection for us.

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1 CHAIRMAN MARSHALL: Any further questions?

2 Thank you, sir.

3 MR. WRIGHT: Thank you.

4 MS. WEST: Lawrence Miller?

5 CHAIRMAN MARSHALL: Let me ask this. Is there
6 anyone else in the audience who signed up?

7 MR. BEREANO: Just that Delegate George Owens of
8 Calvert County was here later after you'd called his
9 name. He just wanted to tell you that he was here.
10 He's going to submit a letter for the record.

11 CHAIRMAN MARSHALL: Thank you very much.

12 There being no further persons to speak, I would
13 like to thank everyone for coming and providing
14 comments on the regulations.

15 The Board has scheduled a second hearing next week
16 on December 16 in Frederick to assure accessibility to
17 the Board by citizens in the western part of our state.
18 Those of you in the eastern and northern can come as
19 well.

20 Testimony that we heard today will become a part
21 of the record and will be considered by the Board in

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1 making their deliberations.

2 Thank you for being here today. The hearing is
3 adjourned.

4 [Whereupon, the hearing was adjourned, to be
5 reconvened in Frederick, Maryland, December 16, 1993.]
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C E R T I F I C A T E

This is to certify that the foregoing transcript
In the matter of: MOSH ADVISORY BOARD HEARING
Prohibiting Smoking in the Workplace
BEFORE: Chairman Marshall
DATE: December 9, 1993
PLACE: Crownsville, Maryland
represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

Breta Bernstein
Breta Bernstein, ^{TKB}
Court Reporter

Cheryl Battles
Cheryl Battles, ^{TKB}
Transcriber

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